

TENTH DAY

THURSDAY, JANUARY 30, 1997

PROCEEDINGS

The Senate met at 11:00 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Galloway, Harris, Haywood, Lindsay, Luna, Madla, Moncrief, Nelson, Nixon, Patterson, Ratliff, Shapiro, Shapleigh, Sibley, Truan, Wentworth, West, Whitmire, Zaffirini.

Absent-excused: Lucio.

To be elected: District 5.

The President announced that a quorum of the Senate was present.

The Reverend John R. Pitts, Senate Chaplain, offered the invocation as follows:

Almighty God, we gather this day to do Your will, to do what You direct, to do what is best for Your people of Texas. We gather asking for Your strength, Your courage, and Your wisdom. Bless us, Lord, this day and always. Amen.

On motion of Senator Truan and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

GUEST PRESENTED

The President introduced to the Senate former Representative and Senator-elect for District 5 Steve Ogden.

The Senate welcomed its guest.

LEAVE OF ABSENCE

On motion of Senator Brown, Senator Lucio was granted leave of absence for today on account of important business.

CO-AUTHOR OF SENATE BILL 56

On motion of Senator Zaffirini and by unanimous consent, Senator Nelson will be shown as Co-author of **SB 56**.

CO-AUTHOR OF SENATE BILL 98

On motion of Senator Zaffirini and by unanimous consent, Senator Shapleigh will be shown as Co-author of **SB 98**.

CO-AUTHOR OF SENATE BILL 211

On motion of Senator Ellis and by unanimous consent, Senator Haywood will be shown as Co-author of **SB 211**.

CO-AUTHOR OF SENATE BILL 212

On motion of Senator Ellis and by unanimous consent, Senator Haywood will be shown as Co-author of **SB 212**.

CO-AUTHORS OF SENATE BILL 250

On motion of Senator Whitmire and by unanimous consent, Senators Brown, Nelson, Truan, and West will be shown as Co-authors of **SB 250**.

CO-AUTHOR OF SENATE BILL 265

On motion of Senator Ellis and by unanimous consent, Senator Haywood will be shown as Co-author of **SB 265**.

CO-AUTHOR OF SENATE BILL 282

On motion of Senator Haywood and by unanimous consent, Senator Ellis will be shown as Co-author of **SB 282**.

MESSAGE FROM THE HOUSE**HOUSE CHAMBER**

Austin, Texas

Thursday, January 30, 1997

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

HCR 41, Honoring Judge Byron Matthews.

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

CAPITOL PHYSICIAN

The President recognized Senator Ellis, who presented Dr. Terry Bevers of Houston as the "Doctor for the Day."

Dr. Bevers, participating in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians, was made welcome by the Senate.

SENATE BILLS AND RESOLUTION ON FIRST READING

The following bills and resolution were introduced, read first time, and referred to the committees indicated:

SB 312 by Harris

Relating to the use of certain information in appraising a public school teacher.

To Committee on Education.

SB 313 by Galloway, Lindsay

Relating to the disannexation of certain areas annexed on or after December 1, 1996, by certain municipalities.

To Committee on Intergovernmental Relations.

SB 314 by Shapleigh

Relating to providing certain entities relief from the local share requirement of a program providing state or federal matching funds.

To Committee on Finance.

SB 315 by Shapleigh

Relating to the creation of a state match pool to provide the local share requirement for a program offering federal matching funds.

To Committee on Finance.

SB 316 by Madla

Relating to the location of community homes.

To Committee on Health and Human Services.

SB 317 by Shapleigh

Relating to the creation of a judicial district composed of El Paso County.

To Committee on Finance.

SB 318 by Ellis

Relating to bonds and reports required of guardians of persons with mental incapacities.

To Committee on Jurisprudence.

SJR 19 by Wentworth

Proposing a constitutional amendment relating to the place at which the supreme court sits to transact business.

To Committee on Jurisprudence.

MESSAGE FROM THE STATE BAR OF TEXAS

The following Message from the State Bar of Texas was read and was referred to the Committee on Nominations.

STATE BAR OF TEXAS

Austin, Texas

January 29, 1997

**TO THE SENATE OF THE SEVENTY-FIFTH LEGISLATURE,
REGULAR SESSION:**

I ask the advice, consent and confirmation of the Senate with respect to the following appointment:

TO BE A MEMBER OF THE COMMISSION ON JUDICIAL CONDUCT
for a term to expire November 19, 2001:

Mr. Blake Tartt
Fulbright & Jaworski, L.L.P.
1301 McKinney
Suite 5100
Houston, Texas 77010-3095

Mr. Tartt will be replacing Charles R. "Bob" Dunn of Houston whose
term expired.

Respectfully submitted,

/s/M. Colleen McHugh
President

SENATE RESOLUTION 68

Senator Nixon offered the following resolution:

WHEREAS, The Senate of the State of Texas takes pleasure in honoring
the Nacogdoches County Chamber of Commerce and the Angelina County
Chamber of Commerce on the occasion of their visit to the State Capitol; and

WHEREAS, Over the years, the Nacogdoches County and Angelina
County chambers of commerce have worked hard to promote the commercial
interests of their communities, to stimulate the areas' economy, and to bring
new business to their localities; and

WHEREAS, Today, the chambers are resourceful organizations whose
members are leaders in the community and are dedicated to protecting the
amenities of the two counties; and

WHEREAS, On January 29, 1997, a special Lufkin/Nacogdoches Day
reception is being held, hosted by the two chambers of commerce, the City of
Lufkin, and the City of Nacogdoches; the reception will feature a special Taste
of East Texas menu; and

WHEREAS, The Angelina County Chamber of Commerce and the
Nacogdoches County Chamber of Commerce deserve to be proud of the many
projects they have initiated and supported on behalf of the area's citizens and
of the invaluable services they provide for the betterment of all the
communities involved; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 75th Legislature,
hereby congratulate the members of the Angelina County Chamber of
Commerce and the Nacogdoches County Chamber of Commerce and wish
them continued success in all their endeavors; and, be it further

RESOLVED, That a copy of this Resolution be prepared for the
chambers as an expression of the high regard of the Texas Senate.

The resolution was read and was adopted by a viva voce vote.

GUESTS PRESENTED

Senator Nixon was recognized and introduced to the Senate a delegation from the Nacogdoches County Chamber of Commerce and the Angelina County Chamber of Commerce.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Truan was recognized and introduced to the Senate a delegation from the Robstown Utility System.

The Senate welcomed its guests.

SESSION TO CONSIDER EXECUTIVE APPOINTMENTS

The President announced the time had arrived to consider the executive appointments to agencies, boards, and commissions. Notice of submission of these names for consideration was given yesterday by Senator Madla.

Senator Madla moved confirmation of the nominees reported Tuesday, January 28, 1997, by the Committee on Nominations.

The President asked if there were requests to sever nominees.

There were no requests offered.

NOMINEES CONFIRMED

The following nominees, as reported by the Committee on Nominations, were confirmed by the following vote: Yeas 29, Nays 0.

Absent-excused: Lucio.

Members, Finance Commission of Texas: WILBURN D. HILTON, Jr., Chair, Hunt County; MARLENE MARTIN, Bexar County; MANUEL JOHN MEHOS, Harris County; VICTOR "BUDDY" PUENTE, Jr., Tarrant County.

Members, Public Utility Commission of Texas: PATRICK HENRY WOOD III, Chair, Travis County; JUDY W. WALSH, Kendall County.

Members, Texas Animal Health Commission: R. A. "ROB" BROWN, Jr., Chair, Throckmorton County; DONALD L. BEREND, Wichita County; H. TEVIS HERD, Midland County; JOE WAYNE TEMPLETON, Ph.D., Brazos County.

Members, Children's Trust Fund of Texas Council: PATRICIA AGUAYO, El Paso County; ANNE C. CREWS, Dallas County; JUAN M. PARRA, M.D., Bexar County; PEGGY B. SMITH, Ph.D., Harris County.

Members, Texas State Board of Examiners of Dietitians: ETHELIND S. GIBSON, Nacogdoches County; PATRICIA MAYERS KRUG, Bexar County; DOROTHY M. SHAFER, Gillespie County.

Members, Fire Fighters' Relief and Retirement Fund Board of Trustees: ROBERT JOE RICE, Chair, Randall County; WEIR LABATT, Bexar County; PAUL V. LOEFFLER, Brewster County; FRANCISCO R. TORRES, Willacy County.

Members, Texas State Library and Archives Commission: CAROLYN P. ARMSTRONG, Bexar County; SANDY MELTON, Dallas County; SANDRA PICKETT, Liberty County.

SENATE BILL 250 ON SECOND READING

On motion of Senator Whitmire and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment **SB 250**. (Submitted by Governor as an emergency matter)

SB 250, Relating to the repeal of release to mandatory supervision and to parole procedures applicable to certain inmates of the Texas Department of Criminal Justice.

The bill was read second time.

Senator Patterson offered the following amendment to the bill:

Floor Amendment No. 1

Amend **SB 250** as follows:

(1) In SECTION 5 of the bill, strike Section 8(c)(1), Article 42.18, Code of Criminal Procedure (Committee Printing page 3, lines 46 and 47), and substitute the following:

"(1) a first degree felony or a second degree felony under Section 19.02, Penal Code (Murder);".

(2) In SECTION 5 of the bill, strike Section 8(c-1), Article 42.18, Code of Criminal Procedure (Committee Printing page 4, lines 5-17), and substitute a new Section 8(c-1) to read as follows:

"(c-1) For each prisoner not excluded under Subsection (c) from release on parole, the parole panel shall review the prisoner during the 30-day period preceding the date on which the calendar time the prisoner has served plus any accrued good conduct time equals the maximum term to which the prisoner was sentenced. The parole panel, after evaluating the prisoner, shall require the prisoner to remain imprisoned if the parole panel determines that the release of the prisoner would pose a significant threat to public safety. In determining whether the release of a prisoner would pose a significant threat to public safety, the parole panel shall assign a significant weight to whether the prisoner is serving a sentence that is 30 years or longer and to evidence supporting an assertion that the prisoner has a history of committing violent acts or sexual offenses, a history of institutional misconduct, or a history of making threats against any person, particularly a threat made after the inmate was imprisoned against a victim of the prisoner, a member of the victim's family, or a witness in the case for which the prisoner was sentenced. The division shall prepare a preliminary report on each prisoner eligible for release under Subsection (c) that contains information determined by the division to be relevant to whether the prisoner, under the criteria listed in this subsection, poses a significant threat to public safety. The division shall provide to the board not later than the 30th day before the date the prisoner is otherwise eligible for evaluation under this subsection that information and a recommendation by the division of whether or not the prisoner should be

~~released after evaluation. [A prisoner may not be released on mandatory supervision if a parole panel determines that the prisoner's accrued good conduct time is not an accurate reflection of the prisoner's potential for rehabilitation and that the prisoner's release would endanger the public.]~~ A parole panel that makes a determination under this subsection ~~[section]~~ shall specify in writing the reasons for the determination. A determination under this subsection is not subject to administrative or judicial review, except that the parole panel making the determination shall reconsider the prisoner for release on parole under this subsection ~~[mandatory supervision]~~ at least twice each year ~~[during the two years]~~ after the ~~[date of the]~~ determination."

(3) In SECTION 55 of the bill (Committee Printing page 29, lines 60-64), strike Subsection (a) and substitute the following:

"(a) The change in law made by this Act to Subsection (c-1), Section 8, Article 42.18, Code of Criminal Procedure, permitting a parole panel to deny release on parole under Subsection (c) to an inmate who poses a significant threat to public safety, applies only to:

(1) an inmate who on or after the effective date of this Act is imprisoned while serving a sentence for an offense, other than an offense described by, including an offense listed in, Subsection (c), Section 8, Article 42.18, Code of Criminal Procedure, regardless of whether the offense was committed before, on, or after the effective date of this Act; and

(2) an inmate who on or after the effective date of this Act is imprisoned while serving a sentence for an offense described by Subsection (c), Section 8, Article 42.18, Code of Criminal Procedure, that was committed on or after August 29, 1977, but before the date on which Subsection (c) was amended to exclude a prisoner who committed the offense from release on parole under that section."

(4) In SECTION 55 of the bill (Committee Printing page 29, between lines 68 and 69), insert the following:

"(c) For the purposes of Subsection (a) of this section, a second degree felony under Section 19.02, Penal Code, and a second degree felony under Section 21.11, Penal Code, were described by Section 8(c), Article 42.18, Code of Criminal Procedure, beginning September 1, 1993, consistent with the intent of the 73rd Legislature, Regular Session, 1993, as evidenced by the addition of those offenses to Section 3g, Article 42.12, Code of Criminal Procedure, in Chapter 900, Acts of the 73rd Legislature, Regular Session, 1993, effective on that date."

The amendment was read and was adopted by a viva voce vote.

The bill as amended was passed to engrossment by a viva voce vote.

SENATE BILL 250 ON THIRD READING

Senator Whitmire moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 250** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent-excused: Lucio.

The bill was read third time and was passed by a viva voce vote.

REASON FOR VOTE

Senator Barrientos submitted the following reason for vote on **SB 250**:

I am voting yea on this piece of legislation but I am concerned about the provision in the bill making it "retroactive." This would appear to raise constitutional questions specifically, ex post facto.

I am also concerned about the potential cost of \$400 million over five years. The fiscal implications are very troublesome. However, the crimes committed by individuals released under current law are heinous, and this measure needs to be taken.

BARRIENTOS

CONGRATULATORY RESOLUTIONS

SR 86 - by Armbrister: Congratulating Cecil Bird of West Columbia.

SR 87 - by Carona: Congratulating the Lake Highlands High School Wildcats.

SR 88 - by Madla: Congratulating Immigration and Naturalization Service Chief Patrol Agent Richard J. Morrissey of Marfa.

SR 89 - by Madla: Congratulating Helen Cloud Austin of San Antonio.

SR 90 - by Madla: Congratulating John Etta Slaughter of San Antonio.

SR 91 - by Madla: Congratulating Ruth Aaron Burns of San Antonio.

SR 92 - by Madla: Congratulating Hattie Briscoe of San Antonio.

SR 93 - by Madla: Congratulating Joyce Sowell of San Antonio.

EMERGENCY EVACUATION ORDERED

The President at 12:01 p.m. announced that the Department of Public Safety had ordered an immediate evacuation of the Capitol.

ADJOURNMENT

On motion of Senator Truan, the Senate at 12:02 p.m. adjourned until 12:00 noon Monday, February 3, 1997.

APPENDIX

COMMITTEE REPORTS

The following committee reports were received by the Senate:

January 30, 1997

STATE AFFAIRS — **SB 145** (Amended)

EDUCATION — **SB 109, SB 245, SB 168** (Amended)